STATE OF NEW HAMPSHIRE DEPARTMENT OF STATE BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:)	
Local Government Center, Inc, et al.)))	Case No: C-2011000036

RESPONDENT JOHN ANDREWS' ANSWER TO BSR'S STAFF PETITION

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., submits the following Answer to the New Hampshire Bureau of Securities Regulation's ("BSR") Staff Petition for Relief:

Respondent Andrews' Introductory Summary

The Staff Petition generally accuses Mr. Andrews of violations of the Pooled Risk Management Programs statute, RSA Chapter 5-B, and the New Hampshire Securities Act, RSA Chapter 421-B. The violations are alleged to have occurred while Mr. Andrews fulfilled his responsibilities as Executive Director of the Local Government Center, Inc. (the "LGC").

At all times, Mr. Andrews acted reasonably and in good faith with respect to all allegations made by the BSR, and in the best interests of his employer. Mr. Andrews, at no time, acted with scienter or committed either a knowing or negligent violation of the statutes cited in the Staff Petition. Moreover, Mr. Andrews, on behalf of the LGC, solicited and received legal advice from an outside law firm with regard to the central activities alleged in the BSR's Petition, and followed or recommended to the LGC that it follow outside counsel's advice. In addition to outside legal counsel, Mr. Andrews or the

LGC retained outside industry consultants to provide advice and assistance to the LGC in making its decisions.

Finally, the Staff Petition fails to allege or describe with particularity any acts committed by Mr. Andrews in support of many of the alleged statutory violations.

Instead, the BSR appears to attribute most of the allegations in the Staff Petition indiscriminately to Mr. Andrews and the LGC as if Mr. Andrews was the sole proprietor of the various LGC entities.

Staff Petition Introduction

1-3. Paragraphs 1-3 contain introductory information to which no response is required.

The Parties

- 4. Paragraph 4 contains the BSR's description of itself, to which no response is required.
- 5. Paragraph 5 attempts to identify the Respondents. Mr. Andrews does not object to the description afforded him in paragraph 5(m). Mr. Andrews denies that the Respondents "offer[] products and services governed by RSA Chapter 5-B and RSA Chapter 421-B...
- ..." Paragraph 5 does not identify a "product or service" offered by a Respondent.

 Moreover, the products and services offered by the business entity Respondents are not securities, and therefore, do not fall within the ambit of RSA Chapter 421-B.

Statement of Facts

6-7. Paragraphs 6-7 contain statements regarding the BSR's view of the history and operation of RSA Chapter 5-B, its view of prior litigation with Respondent Local Government Center, Inc. (the "LGC") and its view of its investigation. Mr. Andrews is not mentioned in paragraphs 6-7, and therefore, no response to the paragraphs is required.

Count 1 - Corporate Governance

8-20. Count 1 does not allege any specific conduct by Mr. Andrews. Additionally, none of the statutes identified by the BSR in the grid of statutes it provided in response to Mr. Andrews' motion for a more definite statement or for clarification of the Staff Petition appears in Count 1. Consequently, no response is required to Count 1, paragraphs 8-20.

Count 2 - Financial Mismanagement

- **21-22**. Paragraphs 21-22 contain statements regarding the BSR's view of the meaning and operation of RSA 5-B:5, I(c). Mr. Andrews is not mentioned in paragraphs 21-22, and therefore, no response to the paragraphs is required.
- **23-56**. Paragraphs 23-56 contain statements regarding the BSR's allegations of the failure to return "surplus" funds and of "improper spending" on behalf of the LGC and other business entity Respondents. Mr. Andrews is not mentioned in paragraphs 23-56, and therefore, no response to the paragraphs is required.
- 57. Paragraph 57, which alleges that the funds used to establish and continue a defined benefit retirement program for LGC employees "must be returned to the cities and towns," is denied. Paragraph 57 incorrectly alleges that the program was "the proposal of then-executive director Andrews." Instead, the program was created over a significant period of time with the consultation of an outside expert in the field of retirement benefits who was experienced in creating similar retirement benefit programs for similar entities. The program also was vetted by numerous people before it was presented to the LGC Board of Directors. Moreover, the creation of the defined benefit retirement program did not violate RSA Chapter 5-B.

58-61. Paragraphs 58-61 contain statements regarding the BSR's allegations of what the BSR refers to as an "improper tying arrangement" related to membership in pooled risk management programs. Mr. Andrews is not mentioned in paragraphs 23-56, and therefore, no response to the paragraphs is required.

Count 3 – Violations of the New Hampshire Securities Act

- 62-108. Paragraphs 62-108 allege various violations of RSA Chapter 421-B, the New Hampshire Securities Act. The underlying premise common to all of the allegations in paragraphs 62-108 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA Chapter 421-B. None of the products or services offered by the Respondent business entities are investment contracts and securities within the ambit of RSA Chapter 421-B. Consequently, there were no securities within the ambit of RSA Chapter 421-B offered or sold by the Respondents.
- **62-79**. Paragraphs 62-79 allege violations of RSA 421-B:11, I, related to the alleged offer and/or sale of unregistered securities. Mr. Andrews is not mentioned in paragraphs 62-79, and therefore, no response to the paragraphs is required.
- **80-93**. Paragraphs 80-93 allege violations of RSA 421-B:6, I related to the alleged failure of the LGC and its employees, including Mr. Andrews, to register as securities broker-dealers, issuer-dealers or agents of securities-dealers and broker-dealers. The underlying premise common to all of the allegations in paragraphs 80-93 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA 421-B. None of the products or services offered by the Respondent business entities are investment contracts and

securities within the ambit of RSA 421-B, and therefore, the entities cannot be "broker-dealers" or "issuer-dealers" and the entities' employees, including Mr. Andrews, cannot be "agents" within the ambit of RSA 421-B:2, II.

94-97. Paragraphs 94-97 allege violations of RSA 421-B:3, I(b), related to the alleged inclusion of material misrepresentations or the omission of material facts in connection with the offer and/or sale of securities. Mr. Andrews is not mentioned in paragraphs 94-97, and therefore, no response to the paragraphs is required.

98-99. Paragraphs 98-99 allege violations of RSA 421-B:3, I(c), related to the alleged engagement in an act, practice or course of business that operates as a fraud or deceit upon a person in connection with the offer and/or sale of securities. Mr. Andrews is not mentioned in paragraphs 98-99, and therefore, no response to the paragraphs is required. 100-103. Paragraphs 100-103 allege violations of RSA 421-B:3, I(c), related to the alleged making of material misrepresentations or the omission of material facts in connection with the offer and/or sale of securities by the LGC, most of its related business entities and the entities' employees, including Mr. Andrews. The underlying premise common to all of the allegations in paragraphs 100-103 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA 421-B. None of the products or services offered by the Respondent business entities are investment contracts or securities within the ambit of RSA 421-B, and therefore, neither the entities nor their employees, including Mr. Andrews, could have made material misrepresentations or omitted material facts in connection with the offer and/or sale of securities within the ambit of RSA 421B. Additionally, Mr. Andrews never made a material misrepresentation or omitted material facts when dealing with anyone on behalf of the LGC.

104-108. Paragraphs 104-108 allege violations of RSA 421-B:3, I(c), related to the alleged engagement of the LGC, most of its related business entities and the entities' employees, including Mr. Andrews, in an act, practice, or course of business that operates as a fraud or deceit upon a person in connection with the offer and/or sale of securities. The underlying premise common to all of the allegations in paragraphs 104-108 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA 421-B. None of the products or services offered by the Respondent business entities are investment contracts and securities within the ambit of RSA 421-B, and therefore, neither the entities nor their employees, including Mr. Andrews, could have engaged in an act, practice, or course of business that operates as a fraud or deceit upon a person in connection with the offer and/or sale of securities within the ambit of RSA 421-B. Additionally, Mr. Andrews never engaged in an act, practice, or course of business that operated as a fraud or deceit upon a person when dealing with anyone on behalf of the LGC. 107. Paragraph 107 contains a misleading statement of law. It is irrelevant whether the Presiding Officer "remembers" that other jurisdictions may have entered cease and desist

Neither federal law nor another state's law governs this proceeding. The BSR has alleged violations of the New Hampshire Security Act, RSA Chapter 421-B. RSA Chapter 421-B requires proof of "knowing" or "negligent" conduct before administrative

orders against business entities and individuals despite a lack of proof of scienter.

penalties can be imposed against entities or individuals. *See* RSA 421-B:23, I(c) and RSA 421-B:26.

108. Paragraph 108 contains only a statement of the BSR's view of "public policy," and therefore, no response is required.

Count 4 – Additional Issues Regarding Limited Liability Company Formation and Management

109-141. Count 4 contains allegations regarding the formation and management of limited liability companies under the control of the LGC. None of the statutes identified by the BSR in the grid of statutes it provided in response to Mr. Andrews' motion for a more definite statement or for clarification of the Staff Petition appears in Count 4. Moreover, the only relief requested for Count 4 appears to be judicial dissolution of Respondents LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC. Consequently, no response is required to Count 4, paragraphs 109-141.

Statement of Law

The Staff Petition contains forty-one (41) numbered paragraphs that recite the BSR's view of the law it deems related to Counts 1-3. While no response ordinarily is required for statements of law, the Scheduling Order requires the Respondents to provide "a responsive, specific answer to the BSR petition, as amended." Accordingly, Mr. Andrews' specific responses to the BSR's Statement of Law are as follows:

Count 1 – RSA 292

1-11. Count 1 does not allege any specific conduct by Mr. Andrews. Additionally, none of the statutes identified by the BSR in the grid of statutes it provided in response to Mr.

¹ In fact, there is no specific relief requested in Count 4. However, since paragraphs 136 through 141 allege that judicial dissolution of Respondents LGC HealthTrust, LLC and LGC Property-Liability Trust, LLC is proper, it appears that the BSR seeks this specific relief if the allegations in Count 4 are proven.

Andrews' motion for a more definite statement or for clarification of the Staff Petition appears in Count 1. Consequently, no response is required to Count 1, paragraphs 1-11.

Count 2 – RSA Chapter 5-B

- 12. Paragraph 1 correctly states the purpose of RSA Chapter 5-B:1.
- **13-14**. "Political subdivision" and "risk management" are defined in RSA 5-B:2, III and RSA 5-B:2, IV, respectively. Paragraphs 13-14 contain statements that are too broad or vague to be deemed correct in all instances.
- 15. Paragraph 15 correctly quotes RSA 5-B:3, I. Mr. Andrews denies that that the conduct alleged by the BSR violated RSA 5-B:3, I, and specifically, that he violated the statute. Moreover, paragraph 15 does not identify any conduct on behalf of Mr. Andrews that the BSR alleges violated the statute.
- **16**. Paragraph 16 contains allegations related only to certain business entity Respondents, and therefore, no response is required to paragraph 16.
- 17. Paragraph 17 contains allegations related only to certain business entity Respondents, and therefore, no response is required to paragraph 17.
- 18. The first sentence of paragraph 18 correctly quotes RSA 5-B:5, I(c). The second sentence of paragraph 18 states an incorrect legal conclusion. None of Mr. Andrews' conduct violated RSA 5-B:5, I(c). Moreover, paragraph 18 does not identify any conduct on behalf of Mr. Andrews that the BSR alleges violated the statute.
- 19-25. Paragraphs 19-25 correctly state provisions of RSA 5-B:4-a. The refrain, "Respondents are subject to this provision[,]" that appears in paragraphs 19-22 and 24-25 is insufficiently definite for a response. Mr. Andrews denies that his conduct violated

RSA Chapter 5-B. Moreover, paragraphs 19-25 do not identify any conduct on behalf of Mr. Andrews that the BSR alleges violated RSA Chapter 5-B.

Count 3 – RSA 421-B

26-41. Paragraphs 26-41 contain various allegations and statements of law regarding alleged violations of RSA 421-B, the New Hampshire Securities Act. The underlying premise common to all of the allegations in paragraphs 26-41 is denied; that is, the products and services offered by the Respondent business entities to their members are investment contracts and securities regulated by RSA 421-B. None of the products or services offered by the Respondent business entities are investment contracts and securities within the ambit of RSA 421-B. Consequently, there were no securities within the ambit of RSA 421-B offered or sold by the Respondents.

Brief Statement of Defenses

Mr. Andrews intends to rely on the following defenses to some or all of the allegations stated in the Staff Petition:

- A. Failure to state a cause of action pursuant to which relief can be granted.
- B. Failure to allege specific instances of conduct by Mr. Andrews sufficient to state a cause of action.
- C. Failure to allege fraud with sufficient particularity.
- D. At all times, Mr. Andrews acted in good faith and in the best interests of his employer.
- E. At all times, Mr. Andrews acted in good faith and without scienter.
- F. At all times, Mr. Andrews acted in good faith upon the advice of counsel and other professionals retained by his employer.

- G. Allegations of violations of RSA 5-B:5, I(c) should be dismissed because the statute is vague and indefinite ("Return all earnings and surplus in excess of any amounts required for administration, claims, reserves, and purchase of excess insurance to the participating political subdivisions."), and therefore, it violates the due process protections of the Fifth Amendment to the United States Constitution and Part 1, Article 15 of the New Hampshire Constitution.
- H. Allegations of violations of RSA 5-B based on conduct prior to June 14, 2010, the effective date of RSA 5-B:4-a, should be dismissed because the retrospective application of RSA 5-B:4-a to conduct that occurred before the statute's effective date violates Article 1, Section 10 of the United States Constitution and Part 1, Article 23 of the New Hampshire Constitution.
- I. Allegations based on conduct alleged to have occurred prior to September 2, 2005, should be dismissed on statute of limitations grounds.
- J. Allegations related to the formation of various business entities in 2003 should be dismissed based on the equitable doctrine of laches.
- K. Mr. Andrews reserves the right to assert additional or other defenses in response to an amended Staff Petition or upon the discovery of additional information through the discovery process.

Prayer for Relief

Mr. Andrews requests that the Presiding Officer dismiss the Staff Petition as against him. Alternatively, Mr. Andrews requests that the Presiding Officer deny the BSR's allegations, claims and requests for relief.

Respectfully Submitted,

JOHN ANDREWS

Date: January 6, 2012

By:

Michael D. Ramsdell, Esq. (NH Bar #2096)

Joshua M. Pantesco (NH Bar # 18887)

ORR & RENO, P.A. One Eagle Square P.O. Box 3550

Concord, NH 03302-3550

(603) 223-9185

mramsdell@orr-reno.com jpantesco@orr-reno.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded this day via electronic mail to all counsel of record.

Michael D. Ramsdéll, Esq.